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1850 M Street
Washington, D.C. 20036
Telephone: (202) 828-7442
Fax: (202) 822-8999

Leon M. Kestenbaum
Vice President
Federal Regulatory Affairs

September 24, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Access Charge Reform, CC Docket No. 96-262

Dear Ms. Salas:

On September 23, 1999, Dick Juhnke and I, together with Dr. Jan Acton of Charles River Associates, met with Alexander Starr, Radhika Karmarkar, Tracy Bridgham and Dana Bradford of the Common Carrier Bureau Enforcement Division, to discuss Sprint's concerns regarding excessive CLEC access charges.

We argued that CLECs have bottleneck monopoly power over access to and from their customers and that the Commission should regulate this bottleneck. Of the various options discussed in the Commission's August 27, 1999 Further Notice in the referenced docket, we argued that the preferable option, consistent with the Commission's desire to avoid intrusive regulation, would be to establish the rate of the ILEC in whose territory the CLEC operates as a ceiling on what CLECs could charge IXCs for access and to allow the CLEC to impose any additional access charges directly on its local service customers. The attached materials were also distributed and discussed.

An original and one copy of this letter are being filed.

Sincerely,

Attachments

cc: (w/o attachments):
Alexander Starr
Radhika Karmarkar
Tracy Bridgham
Dana Bradford

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SPRINT'S POSITION ON CLEC ACCESS CHARGES

- CLECs have bottleneck on long distance access to/from their local end user customers.
- CLECs succeed by signing up end users; thus, they have an incentive to underprice ILECs on retail services.
- The CLECs' bottleneck on access, coupled with their business imperatives, give them an incentive to overcharge for access.
- Sprint is seeing access charges in the range of 8 ¢/minute (on each end) from a number of CLECs.
- There is no sound policy reason why CLEC access charges should be allowed to exceed the level charged by the ILEC where they operate.
 - Commission precedent supports rates based on costs of the most efficient carrier ('bellwether' cases; "best practices" approach adopted in IB Docket No. 96-261).
- CLEC cost levels, start-up costs and lack of scale/scope economies are irrelevant.
 - CLECs enter their markets voluntarily, and can exit at will.
 - CLECs don't attempt to charge retail customers 5X or 10X the ILEC rates for local service.
 - Sprint had to absorb >\$1 billion in start-up costs when it entered long distance.
 - Today, Sprint is incurring sizable losses in PCS.
 - Shareholders and investment bankers should bear these costs, not customers.
- The Commission must send a clear signal that it will not tolerate excessive CLEC access charges, both to curb existing practices and to prevent other CLECs from following suit.
- Otherwise, the choices open to IXC are unattractive, both to IXCs, and from a public policy perspective:
 - Blocking calls to/from CLECs that overcharge.
 - Raising rates overall.
 - Establishing rate differentials for calls to/from offending CLECs.

MEMORANDUM

SUBJECT: FCC jurisdiction over actions by carriers to collect amounts allegedly due from customers

Except for the Common Carrier Bureau's July 16, 1999 decision in MGC Communications Inc., v. AT&T Corp., DA 99-1395 (application for review pending), our research has discovered no cases in which the Commission has entertained a complaint by a carrier against a customer for recovery of amounts allegedly owed by the customer to the carrier. On the contrary, the Commission has consistently held that no such causes of action lie before the Commission, even when the customer is itself a carrier subject to the Commission's jurisdiction.

In Illinois Bell Telephone Co., et al., v. American Telephone and Telegraph Company, 4 FCC Rcd 5268 (1989), the Commission dismissed sua sponte contingent complaints and cross-complaints filed by the BOCs seeking to require AT&T to pay full tariffed rates for special access services. The Commission held that "these complaints fail to state a cause of action under the Communications Act and must be dismissed." Id., at 5270. The Commission observed (id.) that although the complaint provisions of the Communications Act make a carrier liable to its customers, the BOCs' complaints "would subvert that design and turn the complaint procedures into a collection mechanism for the carriers." On reconsideration, noting that the BOC complaints "were based on AT&T's actions as a customer, which are not subject to the complaint process established in §§206-209 of the Communications Act," the Commission affirmed its earlier dismissal of the BOCs' complaints. Id., 4 FCC Rcd 7759, 7760 (1989).

The Illinois Bell case was followed in two other decisions. In Tel-Central of Jefferson City, Mo., Inc., v. United Telephone Company of Missouri, Inc., 4 FCC Rcd 8338 (1989), the Commission denied United's request for relief and cross-complaint seeking payment of unpaid disputed charges billed by United to Tel-Central. Referring to §§206-209 of the Act, the Commission held (id. at 8340-41):

this statutory scheme does not constitute the Commission as collection agent for carriers with respect to unpaid tariffed charges. In the normal situation, if a carrier has failed to pay the lawful charges for services or facilities obtained from another carrier, the recourse of the unpaid carrier is an action in contract to compel payment, or a termination or disconnection of service until those charges have been paid.

In addition, the Common Carrier Bureau followed Illinois Bell in dismissing a cross-complaint in Long Distance/USA, Inc., et al. v. The Bell Telephone Company of Pennsylvania, et al., 7 FCC Rcd 408, 412 (CCB 1992) ("statutory scheme does not, however, constitute the Commission as collection agent for carriers with respect to unpaid tariffed charges").

The Bureau's decision in MGC v. AT&T clearly conflicts with longstanding Commission precedent and makes no attempt to distinguish Illinois Bell and its progeny, or otherwise to explain the jurisdictional basis of its decision.¹ Because of the conflict with Illinois Bell, the MGC decision would appear to be a facially invalid and improper exercise of delegated authority, since the Bureau, under §0.291 of the Commission's Rules, has no authority "to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents or guidelines."

¹ It appears from the order in MGC v. AT&T that AT&T did not contest the Commission's jurisdiction.